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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/006,007	01/13/98	ZHONG	028870-086

IM51/1029  
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EXAMINER

GROUP, K

ART UNIT	PAPER NUMBER
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1755

DATE MAILED:

10/29/98

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/006,337**

Applicant(s)  
**Zhong et al**

Examiner  
**Karl Group**

Group Art Unit  
**1755**



- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- ☒ Claim(s) 14-18 and 23-26 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 14-18 and 23-26 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1755

1. Claims 14-18 and 23-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "near" in the claims is a relative term which renders the claim indefinite. The term "near" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 18 fails to set forth any clear pore size. Non equilibrium dries glasses may have a variety of pore sizes.

The terminology "surface area greater than the non-near equilibrium-dried bioactive glass" is considered to render the claims indefinite since it fails to clearly set forth a surface area within this scope i.e. variable limitation that may change with time and technology. Furthermore "the non-equilibrium dried" lacks antecedent basis.

Also the claims fail to set forth how the surface area is introduced to the glass. Is it due to particle size or porosity?

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

3. Claims 14-18,23-26 are rejected under 35 U.S.C. 102(a or e) as being anticipated by Ducheyne et al (5,591,453; 5,643,789; 5,648,301; 5,676,720; 5,811,302) each taken alone.

Ducheyne et al teach glass compositions including porosity within the instant claims . The process of manufacture is not considered to patentably distinguish the claimed product, see In re Thorpe 227 USPQ 964.

4. Claims 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Schepers et al.


The instant claims do not require any porosity which distinguish from the granular material of Schepers.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl Group whose telephone number is (703) 308-3821.

keg

October 21, 1998

  
KARL GROUP  
PRIMARY EXAMINER  
GROUP 155